

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT L. GARBER, Derivatively on Behalf :
of LEHMAN BROTHERS HOLDINGS, INC., :
 :
Plaintiff, :
 :
v. : Case No.: 07-CV-02990 (DAB/HBP)
 :
RICHARD S. FULD, JR., MICHAEL L. :
AINSLIE, JOHN F. AKERS, ROGER S. :
BERLIND, THOMAS H. CRUIKSHANK, :
MARSHA JOHNSON EVANS, SIR :
CHRISTOPHER GENT, JOHN L. CECIL, :
ROLAND A. HERNANDEZ, JOHN D. :
MACOMBER, DINA MERRILL, JONATHAN :
BEYMAN, DAVID GOLDFARB, JOSEPH M. :
GREGORY, JEREMY M. ISAACS, :
CHRISTOPHER O'MEARA, THOMAS A. :
RUSSO, BRADLEY H. JACK, HENRY :
KAUFMAN, STEPHEN M. LESSING, :
MICHAEL F. MCKEEVER, JEFFREY :
VANDERBEEK, :
 :
Defendants, :
 :
- and - :
 :
LEHMAN BROTHERS HOLDINGS, INC., :
 :
Nominal Defendant. :
-----X
- to be consolidated with -

-----X
DORIS STAEHR, Derivatively on Behalf of :
LEHMAN BROTHERS HOLDINGS, INC., :

Plaintiff, :

v. :

Case No.: 07-CV-03562 (DAB/HBP)

RICHARD S. FULD, JR., JOSEPH M. :
GREGORY, THOMAS A. RUSSO, DAVID :
GOLDFARB, STEPHEN M. LESSING, :
JEREMY M. ISAACS, CHRISTOPHER M. :
O'MEARA, JEFFREY A. WELIKSON, HENRY :
KAUFMAN, ROGER S. BERLIND, JOHN D. :
MACOMBER, MICHAEL L. AINSLIE, JOHN :
F. AKERS, THOMAS H. CRUIKSHANK, :
CHRISTOPHER G. GENT, MARSHA J. :
EVANS, BRADLEY H. JACK, JEFFREY :
VANDERBEEK, MICHAEL F. MCKEEVER, :
JOHN L. CECIL, CHARLES B. HINTZ, :
ROBERT MATZA, JENNIFER MARRE, DINA :
MERRILL and HIDEICHIRO KOBAYASHI, :

Defendants, :

- and - :

LEHMAN BROTHERS HOLDINGS, INC., :

Nominal Defendant. :

-----X

- to be consolidated with -

-----X	:	
LOCALS 302 AND 612 OF THE	:	
INTERNATIONAL UNION OF OPERATING	:	
ENGINEERS-EMPLOYERS CONSTRUCTION	:	
INDUSTRY RETIREMENT TRUST,	:	
Derivatively on Behalf of	:	
LEHMAN BROTHERS HOLDINGS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No.: 07-CV-03950 (DAB/HBP)
	:	
RICHARD S. FULD, JR., JOSEPH M.	:	
GREGORY, CHRISTOPHER M. O'MEARA,	:	
THOMAS A. RUSSO, JEREMY M. ISAACS,	:	
DAVID GOLDFARB, BRADLEY H. JACK,	:	
JEFFREY VANDERBEEK, JONATHAN E.	:	
BEYMAN, MICHAEL L. AINSLIE, JOHN F.	:	
AKERS, ROGER S. BERLIND, THOMAS H.	:	
CRUIKSHANK, MARSHA JOHNSON EVANS,	:	
SIR CHRISTOPHER GENT, ROLAND A.	:	
HERNANDEZ, HENRY KAUFMAN, JOHN D.	:	
MACOMBER and DINA MERRILL,	:	
	:	
Defendants,	:	
	:	
- and -	:	
	:	
LEHMAN BROTHERS HOLDINGS, INC.,	:	
	:	
Nominal Defendant.	:	
-----X	:	

AFFIRMATION OF ERIC M. ALBERT

Eric M. Albert, an attorney duly licensed to practice law before the United States District Court in the Southern District of New York, hereby affirms that the following is true under penalty of perjury:

1. I am an attorney associated with the law firm of Simpson Thacher & Bartlett LLP, counsel for Nominal Defendant Lehman Brothers Holdings, Inc. and all Individual Defendants, other than Hideichiro Kobayashi, in the above-captioned actions. I am fully familiar with the

matters stated herein based on personal knowledge or review of files in the possession of my firm. I submit this affirmation in support of Defendants' Memorandum of Law in Response to Motions of Plaintiff Locals 302 & 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust ("Retirement Trust") and of Plaintiff Robert L. Garber ("Garber") and Prospective Plaintiff Saginaw Police & Fire Pension Board.

2. Attached hereto as Exhibit A is a true and correct copy of the Related Case Affidavit filed by counsel for Plaintiff Retirement Trust on or about May 21, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of the Stipulation and Order entered in the *Retirement Trust* Action on June 21, 2007.

4. Attached hereto as Exhibit C is a true and correct copy of a letter from counsel for Plaintiff Garber to this Court, dated July 6, 2007.

5. Attached hereto as Exhibit D is a Proposed Order Consolidating the Actions, Appointing Lead Plaintiff and Approving Selection of Lead Counsel.

Dated: New York, New York
August 15, 2007

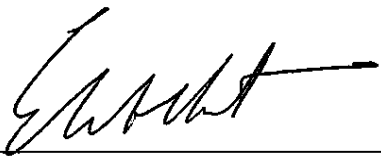

Eric. M. Albert

EXHIBIT A

07 CV 3950

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOC # 3

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF OPERATING
ENGINEERS-EMPLOYERS
CONSTRUCTION INDUSTRY
RETIREMENT TRUST, Derivatively on
Behalf of LEHMAN BROTHERS HOLDINGS
INC.,

Plaintiff,

vs.

RICHARD S. FULD, JR., JOSEPH M.
GREGORY, CHRISTOPHER M. O'MEARA,
THOMAS A. RUSSO, JEREMY M. ISAACS,
DAVID GOLDFARB, BRADLEY H. JACK,
JEFFREY VANDERBEEK, JONATHAN E.
BEYMAN, MICHAEL L. AINSLIE, JOHN F.
AKERS, ROGER S. BERLIND, THOMAS H.
CRUIKSHANK, MARSHA JOHNSON
EVANS, SIR CHRISTOPHER GENT,
ROLAND A. HERNANDEZ, HENRY
KAUFMAN, JOHN D. MACOMBER and
DINA MERRILL,

Defendants,

- and -

LEHMAN BROTHERS HOLDINGS INC., a
Delaware corporation,

Nominal Defendant.

Civil Action No.

CLASS ACTION

RELATED CASE AFFIDAVIT

2007 MAY 21 PM 3:17
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
WEE

STATE OF NEW YORK)
: ss:
COUNTY OF SUFFOLK)

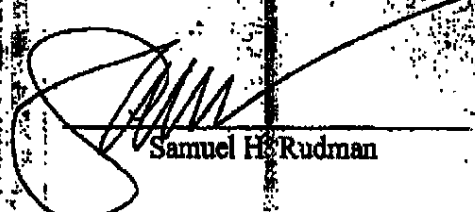
SAMUEL H. RUDMAN, affirms and says:

1. I am a member of the law firm of Lerach Coughlin Stoia Geller Rudman and Robbins LLC, attorneys for plaintiff in the above-captioned action, which is brought under federal law in connection with alleged violations of the federal securities laws.

2. Upon information and belief, this action is related to the previously-filed action captioned *Garber v. Fuld, et al.*, No 07CV2990-DAB, which also asserts similar claims based on violations of the federal securities laws by defendants and arises out of the same nucleus of common operative facts as that action.

Accordingly, it is respectfully submitted that this action should be assigned as a related case to Judge Deborah Batts.

Sworn to before me this 21st
day of May, 2007.

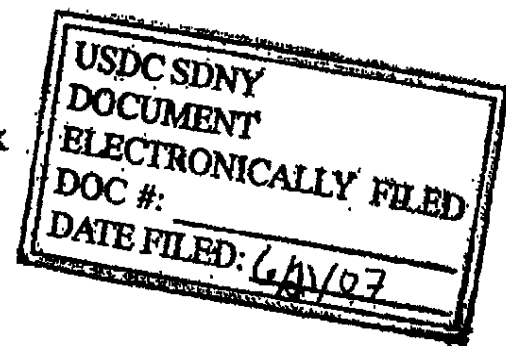

Samuel H. Rudman


Notary Public

KELLY A. STADELMANN
Notary Public, State Of New York
No. 01ST8047280
Qualified in Nassau County
Commission Expires August 28, 2010

EXHIBIT B

BATTIS, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF OPERATING
ENGINEERS-EMPLOYERS CONSTRUCTION
INDUSTRY RETIREMENT TRUST,
Derivatively on Behalf of
LEHMAN BROTHERS HOLDINGS, INC.,

Plaintiff,

Case No.: 07-CV-03950 (DAB/HBP)

v.

RICHARD S. FULD, JR., JOSEPH M.
GREGORY, CHRISTOPHER M. O'MEARA,
THOMAS A. RUSSO, JEREMY M. ISAACS,
DAVID GOLDFARB, BRADLEY H. JACK,
JEFFREY VANDERBEEK, JONATHAN E.
BEYMAN, MICHAEL L. AINSLIE, JOHN F.
AKERS, ROGER S. BERLIND, THOMAS H.
CRUIKSHANK, MARSHA JOHNSON EVANS,
SIR CHRISTOPHER GENT, ROLAND A.
HERNANDEZ, HENRY KAUFMAN, JOHN D.
MACOMBER and DINA MERRILL,

Defendants,

- and -

LEHMAN BROTHERS HOLDINGS, INC.,

Nominal Defendant.

STIPULATION AND ORDER /DAB/

WHEREAS Plaintiff Locals 302 and 612 of the International Union of Operating
Engineers-Employers Construction Industry Retirement Trust ("International Union") filed a
complaint in the United States District Court for the Southern District of New York on or about

May 21, 2007 entitled *International Union ex rel. Lehman Brothers Holdings, Inc. v. Fuld, et al.*, Civil Action No. 07-CV-03950;

WHEREAS there are two related cases currently pending in this Court, namely *Garber ex rel. Lehman Brothers Holdings, Inc. v. Fuld, et al.*, Civil Action No. 07-CV-02990 and *Staehr ex rel. Lehman Brothers Holdings, Inc. v. Fuld, et al.*, Civil Action No. 07-CV-03562 (the "Related Actions");

WHEREAS Nominal Defendant Lehman and the individual defendants were served with the summons and complaint in this action on June 1, 2007;

WHEREAS Nominal Defendant Lehman and the individual defendants currently have until June 21, 2007 to answer or move to dismiss the complaint in this action pursuant to Fed. R. Civ. P. 12;

WHEREAS counsel for International Union and counsel for Defendants consider an extension of Defendants' time to respond in order to seek consolidation of this action with the Related Actions to be in the best interests of all parties and the most efficient use of the Court's resources;

NOW, THEREFORE, it is hereby STIPULATED AND AGREED by and between the undersigned counsel as follows:

1. Nominal Defendant Lehman and the individual defendants' response date to the complaint filed in this action is hereby adjourned pending the consolidation of this action with the Related Actions and the appointment of lead plaintiff and/or lead counsel.
2. A consolidated complaint shall be filed within forty-five (45) days after the appointment of lead plaintiff and/or lead counsel.

3. Within forty-five (45) days after they are served with a copy of the consolidated complaint, Lehman and any individuals named as defendants therein shall answer or move to dismiss the consolidated complaint.

4. If motions to dismiss are filed by Lehman and/or any individual defendants, then Plaintiffs shall file their opposition, if any, within forty-five (45) days after the filing of such motion(s).

5. Lehman and/or any moving individual defendants shall file their replies on their motion(s), if any, within twenty-one (21) days after the filing of Plaintiffs' opposition papers.

6. This Stipulation shall not prejudice any party's rights in this action.

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP

By: 
Samuel H. Rudman (SR-7957)
David A. Rosenfeld (DR-7564)

Dated: June 19, 2007

58 South Service Road, Suite 200
Melville, NY 11747
Telephone: (631) 367-7100
Facsimile: (631) 367-1173

William S. Lerach
Darren J. Robbins
Travis E. Downs III
Benny C. Goodman III

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423

*Attorneys for Locals 302 and 612 of the International Union of Operating Engineers-Employers
Construction Industry Retirement Trust*

SIMPSON THACHER & BARTLETT LLP

By: 

Michael J. Chopiga (MC-4168)
James G. Gamble (JG-6286)
Eric M. Albert (EA-7169)

Dated: June 19, 2007

425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

*Attorneys for Defendants*IT IS SO ORDERED this 21st day of June, 2007.

HON. DEBORAH A. BATTIS
UNITED STATES DISTRICT JUDGE

EXHIBIT C



July 6, 2007

VIA UPS OVERNIGHT DELIVERY

Hon. Deborah A. Batts
United States District Judge
Southern District of New York
500 Pearl Street, Room 2510
New York, New York 10007

Re: *Garber ex rel. Lehman Bros. Holdings, Inc. v. Fuld, et al*
No. 07-CV-02990 (DAB/HPB) ("*Garber*")

Locals 302 & 612, Int'l Union of Operating Eng'rs-Employers Constr.
Indus. Ret. Trust ex rel. Lehman Bros. Holdings, Inc. v. Fuld, et al
No. 07-CV-03950 (DAB/HPB) ("*International Union*")

Dear Judge Batts:

We represent Plaintiffs in the above-referenced *Garber* action, and write to respond to the letter dated June 27, 2007, from James G. Gamble, counsel to Lehman Brothers Holdings, Inc. ("*Lehman*") and the individual defendants (collectively the "*Defendants*"). By that letter, Defendants seek a pre-motion conference to discuss consolidation of the above-referenced actions and other case management issues. This letter follows a stipulation (and order) in the above-referenced *International Union* action, which we, as counsel for Plaintiffs in the *Garber* action, first saw after the stipulation was filed. This stipulation, which was "so ordered" by the Court, includes a schedule that assumes the consolidation of both of the above-referenced cases and appointment of "lead plaintiff and/or lead counsel", for the consolidated action.

As counsel to the plaintiffs in *Garber*, we have no objection to the request for a pre-motion conference, to the consolidation of the cases or an adjournment of the date for Defendants' response in the *Garber* action in accordance with the Defendants' proposal in their June 27, 2007 letter.

ATTORNEYS AT LAW

CONNECTICUT
OHIO
CALIFORNIA

SCOTT + SCOTT
800 B STREET
SUITE 1800
SAN DIEGO, CA 92101

319 233-4585 VOICE
419 233-0608 FAX
SCOTTLAW@SCOTT-SCOTT.COM
WWW.SCOTT-SCOTT.COM

Hon. Deborah A. Batts
July 6, 2007
Page 2

We have, however, been unable to reach agreement on a proposed consolidation and scheduling order because of our unsuccessful efforts in reaching agreement with counsel for Plaintiffs in the *International Union* action for a leadership structure for the consolidated action. These discussions are on-going, and we hope to be able to suggest to the Court an agreed upon structure for managing the prosecution of these actions.

We, thus, would respectfully request that the Court (1) order that the cases are consolidated; (2) adjourn Defendants' response date in the *Garber* action until further notice; and (3) permit Plaintiffs in both actions another 30 days to either reach agreement on the leadership structure, and submit a proposed order for the Court's review, or else file motions for the appointment of Lead Plaintiffs and Lead Counsel.

Very respectfully yours,

SCOTT + SCOTT LLP

A handwritten signature in cursive script that reads "Beth A. Kaswan". To the right of the signature is a small, stylized circular mark.

Beth A. Kaswan

BAK:lla
cc: All counsel of record
Enclosures

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT L. GARBER, Derivatively on Behalf :
of LEHMAN BROTHERS HOLDINGS, INC., :
 :
Plaintiff, :
 :
v. : Case No.: 07-CV-02990 (DAB/HBP)
 :
RICHARD S. FULD, JR., MICHAEL L. :
AINSLIE, JOHN F. AKERS, ROGER S. :
BERLIND, THOMAS H. CRUIKSHANK, :
MARSHA JOHNSON EVANS, SIR :
CHRISTOPHER GENT, JOHN L. CECIL, :
ROLAND A. HERNANDEZ, JOHN D. :
MACOMBER, DINA MERRILL, JONATHAN :
BEYMAN, DAVID GOLDFARB, JOSEPH M. :
GREGORY, JEREMY M. ISAACS, :
CHRISTOPHER O'MEARA, THOMAS A. :
RUSSO, BRADLEY H. JACK, HENRY :
KAUFMAN, STEPHEN M. LESSING, :
MICHAEL F. MCKEEVER, JEFFREY :
VANDERBEEK, :
 :
Defendants, :
 :
- and - :
 :
LEHMAN BROTHERS HOLDINGS, INC., :
 :
Nominal Defendant. :
-----X
- to be consolidated with -

**[PROPOSED] ORDER CONSOLIDATING THE ACTIONS, APPOINTING LEAD
PLAINTIFF AND APPROVING SELECTION OF LEAD COUNSEL**

-----X
DORIS STAEHR, Derivatively on Behalf of :
LEHMAN BROTHERS HOLDINGS, INC., :
 :
Plaintiff, :
 :
v. : Case No.: 07-CV-03562 (DAB/HBP)
 :
RICHARD S. FULD, JR., JOSEPH M. :
GREGORY, THOMAS A. RUSSO, DAVID :
GOLDFARB, STEPHEN M. LESSING, :
JEREMY M. ISAACS, CHRISTOPHER M. :
O'MEARA, JEFFREY A. WELIKSON, HENRY :
KAUFMAN, ROGER S. BERLIND, JOHN D. :
MACOMBER, MICHAEL L. AINSLIE, JOHN :
F. AKERS, THOMAS H. CRUIKSHANK, :
CHRISTOPHER G. GENT, MARSHA J. :
EVANS, BRADLEY H. JACK, JEFFREY :
VANDERBEEK, MICHAEL F. MCKEEVER, :
JOHN L. CECIL, CHARLES B. HINTZ, :
ROBERT MATZA, JENNIFER MARRE, DINA :
MERRILL and HIDEICHIRO KOBAYASHI, :
 :
Defendants, :
 :
- and - :
 :
LEHMAN BROTHERS HOLDINGS, INC., :
 :
Nominal Defendant. :
-----X
- to be consolidated with -

-----X	:	
LOCALS 302 AND 612 OF THE	:	
INTERNATIONAL UNION OF OPERATING	:	
ENGINEERS-EMPLOYERS CONSTRUCTION	:	
INDUSTRY RETIREMENT TRUST,	:	
Derivatively on Behalf of	:	
LEHMAN BROTHERS HOLDINGS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No.: 07-CV-03950 (DAB/HBP)
	:	
RICHARD S. FULD, JR., JOSEPH M.	:	
GREGORY, CHRISTOPHER M. O'MEARA,	:	
THOMAS A. RUSSO, JEREMY M. ISAACS,	:	
DAVID GOLDFARB, BRADLEY H. JACK,	:	
JEFFREY VANDERBEEK, JONATHAN E.	:	
BEYMAN, MICHAEL L. AINSLIE, JOHN F.	:	
AKERS, ROGER S. BERLIND, THOMAS H.	:	
CRUIKSHANK, MARSHA JOHNSON EVANS,	:	
SIR CHRISTOPHER GENT, ROLAND A.	:	
HERNANDEZ, HENRY KAUFMAN, JOHN D.	:	
MACOMBER and DINA MERRILL,	:	
	:	
Defendants,	:	
	:	
- and -	:	
	:	
LEHMAN BROTHERS HOLDINGS, INC.,	:	
	:	
Nominal Defendant.	:	
-----X	:	

Having considered the motion of Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust ("Retirement Trust") for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of Lead Counsel and the motion of Robert L. Garber ("Garber") and Saginaw Police & Fire Pension Board ("Saginaw") for Selection as Lead Plaintiffs and Approval of Lead Counsel, and the responses of other parties to these actions, and good cause appearing therefore:

1. The Motion to Consolidate is granted.
2. The following actions are hereby consolidated for all purposes, including pretrial proceedings, trial and appeal, pursuant to Federal Rule of Civil Procedure 42(a):

Garber v. Fuld, et al., No. 07-CV-02990 (DAB/HBP)

Staehr v. Fuld, et al., No. 07-CV-03562 (DAB/HBP)

Retirement Trust v. Fuld, et al., No. 07-CV-03950 (DAB/HBP)

3. The caption of these consolidated actions shall be “In re Lehman Brothers Holdings, Inc. Derivative Litigation” and the files of these consolidated actions shall be maintained in one file under Master File No. 07-CV-02990 (DAB/HBP). Any future actions now pending or later filed that arise out of or are related to the same facts as alleged in the above-captioned actions shall be consolidated for all purposes, if and when they are brought to the Court’s attention.

4. Every pleading filed in the consolidated action, or in any separate action included herein, shall have the following caption:

-----X	:	
In re LEHMAN BROTHERS HOLDINGS, INC.	:	Master File No.:
DERIVATIVE LITIGATION.	:	07-CV-02990 (DAB/HBP)
	:	
-----X		

5. _____ is hereby appointed Lead Plaintiff.
6. The law firm of _____ is hereby appointed Lead Counsel.
7. The Individual Defendants and Nominal Defendant need not respond to the complaints originally filed in the above-captioned actions.
8. Plaintiffs shall file a Consolidated Complaint within sixty (60) days of the date of this Order.

9. The Individual Defendants and Nominal Defendant shall move or answer within sixty (60) days after filing of the Consolidated Complaint.

10. In the event that any of the Individual Defendants and/or Nominal Defendant file a motion directed at the Consolidated Complaint, Plaintiffs shall file any opposition to such motion within forty-five (45) days of service of such motion, and the Individual Defendants and/or Nominal Defendant shall file their reply in support of such motion within thirty (30) days of service of Plaintiffs' opposition.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE